

ASSEMBLY BILL

No. 687

Introduced by Assembly Member Wilk

February 25, 2015

An act to amend Section 1671 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL’S DIGEST

AB 687, as introduced, Wilk. Contracts: liquidated damages.

Existing law establishes the general presumption that a contractual provision liquidating the damages for the breach of a contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made. Existing law excepts from the presumption certain contracts, including those for damages that are to be recovered from a party to a lease of a dwelling.

This bill would provide that if parties to a pending action stipulate for settlement of an action, as specified, a provision of the stipulation liquidating damages for breach of the stipulation is valid unless the party seeking to invalidate the liquidated damages provision establishes that the amount of liquidated damages exceeds the damages, interest, recoverable costs, and reasonable attorney’s fees sought in the action.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1671 of the Civil Code is amended to
2 read:

1 1671. (a) This section does not apply in any case where another
2 statute expressly applicable to the contract prescribes the rules or
3 standard for determining the validity of a provision in the contract
4 liquidating the damages for the breach of the contract.

5 (b) Except as provided in subdivision (c), a provision in a
6 contract liquidating the damages for the breach of the contract is
7 valid unless the party seeking to invalidate the provision establishes
8 that the provision was unreasonable under the circumstances
9 existing at the time the contract was made.

10 (c) The validity of a liquidated damages provision shall be
11 determined under subdivision (d) and not under subdivision (b)
12 where the liquidated damages are sought to be recovered from
13 either:

14 (1) A party to a contract for the retail purchase, or rental, by
15 such party of personal property or services, primarily for the party's
16 personal, family, or household purposes; or

17 (2) A party to a lease of real property for use as a dwelling by
18 the party or those dependent upon the party for support.

19 (d) In the cases described in subdivision (c), a provision in a
20 contract liquidating damages for the breach of the contract is void
21 except that the parties to such a contract may agree therein upon
22 an amount which shall be presumed to be the amount of damage
23 sustained by a breach thereof, when, from the nature of the case,
24 it would be impracticable or extremely difficult to fix the actual
25 damage.

26 (e) *Notwithstanding subdivisions (c) and (d), if parties to a*
27 *pending action stipulate for settlement of an action, either in a*
28 *signed writing outside the court's presence or orally before the*
29 *court, a provision of the stipulation liquidating damages for breach*
30 *of the stipulation is valid unless the party seeking to invalidate the*
31 *liquidated damages provision establishes that the amount of*
32 *liquidated damages exceeds the damages, interest, recoverable*
33 *costs, and reasonable attorney's fees sought in the action.*